

INDIVIDUAL RULES AND PRACTICES FOR TRIALS

Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
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Courtroom Deputy

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The following rules and procedures apply to both civil and criminal trials before Judge Furman.

- A. Schedule.** Except for the first day of a jury trial, trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:30 p.m., with one short break from approximately 11:30 a.m. to noon. For jury trials, the first day of trial (that is, jury selection and any other proceedings) will generally be conducted from 9:30 to 5 p.m.
- B. Audio-Visual Needs.** If a party needs to use audio or visual equipment at trial, it is that party's responsibility to ensure that any required approvals are obtained and the necessary equipment is set up and working properly in advance of trial. The party should contact Alexandra Smallman, Courtroom Deputy, at (212) 805-0282, sufficiently in advance of trial to make the necessary arrangements and test the equipment. To the extent that authorization is required to use electronic devices, a party must seek that authorization in accordance with Judge Furman's Individual Rules and Practices for Civil or Criminal Cases in timely fashion.
- C. Jury Selection.** Jurors will be selected by the struck panel method, as described in Attachment A.
- D. Time Limits.** In most civil cases, the Court will impose time limits on both sides at the final pretrial conference. The time limits will apply to the parties' opening statements and examinations of witnesses; lengthy colloquies before the jury will be split down the middle. The time limits do not apply to jury selection or summations; the Court will impose separate time limits for summations. The parties should be prepared to address the issue of time limits at the final pretrial conference.
- E. Trial Practices.** Counsel shall abide by the following rules and practices with respect to witnesses, the handling of exhibits, and making objections:
 - 1.** Sidebars during jury trials are strongly disfavored. Counsel are expected to anticipate any problems that might require argument and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence, ideally in advance of the final pretrial conference.

2. If counsel intends to use a demonstrative exhibit during his or her opening statement, he or she shall confer with opposing counsel and advise the Court in advance.
3. Counsel shall ensure that each witness is present and ready to take the stand when that witness's turn to testify arrives. If a witness finishes his or her testimony, and the side calling that witness does not have another witness present and ready to testify, that side will be deemed to have rested, and the Court will proceed to the next phase of the trial.
4. If both sides intend to call a particular witness, the parties shall confer in an effort to ensure that the witness does not need to be called twice. Where a defense witness is called by the plaintiff (or a rebuttal witness is called by a defendant), the Court will allow counsel to go beyond the scope of the direct examination on cross-examination to avoid the need for the witness to be recalled.
5. If counsel plan to use a deposition at trial, for impeachment or any other purpose, a copy of the deposition should be provided to the Court in advance of the trial session during which the deposition is to be used.
6. In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he or she intends to introduce at the session. The parties should raise any objections to an exhibit, other than authenticity or foundation, before the opening of the session. If possible, the Court will rule on the objection then, thereby eliminating the necessity for a colloquy or sidebar when the exhibit is offered.
7. Exhibits must be pre-marked (that is, with exhibit stickers or the like) and sufficient copies should be made, as appropriate, for witnesses, opposing counsel, jurors, the court reporter, any interpreters, and the Courtroom Deputy.
8. If counsel intends to publish hard copies of documentary exhibits to the jury rather than using the Court's audiovisual system, a separate copy should be provided for each juror to avoid unnecessary delay.
9. Any exhibit offered in evidence should, at the time of such offer, be shown to opposing counsel unless it was provided, pre-marked, to counsel before the proceeding. At the end of trial, counsel should make sure they have all of their exhibits. The Court is not responsible for them.
10. Request permission before approaching the bench; and any document counsel wish to have the Court examine should be handed to the Courtroom Deputy.
11. If counsel intends to question a witness about a group of documents, he or she should avoid delay by having all the documents with him or her when commencing the examination. Where practicable, counsel should provide all the documents in the group to the witness and conduct the examination from the podium so as to avoid the need to approach the witness multiple times.

12. Counsel should not make speaking objections before the jury. In making objections before the jury, counsel should state “objection” only and provide the legal ground for the objection (e.g., “relevance” or “hearsay”) only if elaboration is requested by the Court.
13. Counsel should not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at the next recess.
14. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.

F. Conduct of Counsel During Trial. Unless excused by the Court or incapable on account of disability, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following rules and practices:

1. Stand as Court is opened, recessed, or adjourned.
2. Stand when the jury enters or exits the courtroom.
3. Stand when addressing, or being addressed by, the Court.
4. Stand at the lectern while examining any witness; except that counsel may, with the Court’s permission, approach the Deputy’s desk or the witness for purposes of handling or tendering exhibits.
5. Address all remarks to the Court, not to opposing counsel.
6. Be respectful of opposing counsel, the litigants, and witnesses.
7. Refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.
8. Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct-examination, shall be the attorney recognized for cross-examination.
9. Commence cross-examination without preliminaries.
10. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
11. Counsel should not face or otherwise appear to address him or herself to jurors when questioning a witness.
12. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

G. Post-Trial Procedures. Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal.

Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling, or punctuation should be ignored.

ATTACHMENT A

Procedures for Jury Selection

The Court will select jurors using the struck panel method as follows. The Court will conduct a *voir dire* of a number of panelists computed by totaling: the number of jurors to be selected (8 in most civil cases and 12 in criminal cases); the number of alternates (none in civil cases and usually 2 in criminal cases); and the number of peremptory challenges. Thus, in a civil case with an 8-person jury and 3 peremptory challenges per side, the Court will *voir dire* 14 panelists. *See* Fed. R. Civ. P. 47, 48; 28 U.S.C. § 1870. In trials expected to last for substantially more than a week, the Court will consider increasing the number of jurors in a civil case and the number of alternates in a criminal case.

In a single defendant criminal case in which the defendant has 10 and the Government 6 peremptory challenges, plus 1 each with respect to alternates, *see* Fed. R. Crim. P. 24, the Court will *voir dire* 32 panelists (12 jurors + 2 alternates + 10 peremptories for the defendant + 6 peremptories for the Government + 1 peremptory for the defendant for the alternates + 1 peremptory for the Government for the alternates).

The panelists will be *voir dired* (by the Court, not counsel) in the Courtroom. If issues are raised that are better discussed outside the presence of the entire panel (e.g., sensitive issues, requests to be excused, etc.), the Court will follow-up with the individual jurors either at sidebar or in the robing room. If a panelist is excused for cause, he or she will be replaced by another prospective juror from the pool and the new panelist will be *voir dired*. After the Court has *voir dired* all members of the panel, the Court will — at sidebar or in the robing room — give counsel an opportunity to propose follow up questions and entertain challenges for cause.

Once all challenges for cause have been heard and decided, the parties will then exercise their peremptory challenges (in the Courtroom) against the panelists who compose the potential members of the regular jury (in the ordinary criminal case, against the first 28 panelists). Peremptory challenges will be exercised simultaneously, with each party submitting a written list of the panelists it wishes to excuse. Any overlap among the lists of challenges will not result in parties receiving additional challenges. The jurors will be selected starting with the unchallenged juror with lowest number. For example, in an ordinary criminal case, if there was an overlap of 1 peremptory challenge, the 15 challenged panelists would be excused and the first 12 of the remaining 13 would be seated as the jury. The 13th panelist, that is, the unchallenged panelist with the highest number, would also be excused.

Finally, where applicable, the parties will exercise their peremptory challenges against the panelists who compose the potential alternate jurors (in the ordinary criminal case, against panelists 29 through 32). Again, peremptory challenges will be exercised simultaneously. In the event of an overlap in challenges, the jurors will be selected from those with the lowest numbers.